

THE LAW OF JULY 13, 1990
on the Privatisation of State-Owned Enterprises
(J. of L. of 1990 No. 51, item 298, with subsequent amendments)

CHAPTER 1
General Provisions

Art. 1.

The privatisation of a state-owned enterprise is based on offering to third parties, shares or stocks of a company evolving from the transformation of a state-owned enterprise and owned exclusively by the State Treasury, or offering to third parties the assets of a state-owned enterprise or the sale of the enterprise. Therefore, a state-owned enterprise can be transformed into a company or wound-up upon the basis of this Law.

Art. 2.

1. On a motion of the Council of Ministers, Parliament shall determine annually the general directions of privatisation and specify the use of resources obtained from privatisation activity. Parliamentary decisions are made jointly with the enactment of the yearly budget act.

2. The Council of Ministers, by decree, shall specify those state-owned enterprises which are particularly significant to the national economy, and whose privatisation requires the approval of the Council of Ministers.

Art 3.

The regulations specified in this Law concerning the articles of incorporation, shares, supervisory council, equity (share) capital and general meetings [of a joint stock company] apply equally to the deed of association, original capital and the meeting of shareholders of a limited liability company.

Art. 4.

Wherever this Law refers to:

1. Disposing of shares—is understood to mean specifically: the sale of shares, disposal of the rights to shares, their use as collateral, or lease thereof.

2. An integrated part of the assets of a state-owned enterprise is understood to mean a set of tangible and intangible assets which can constitute a separate enterprise, specifically a plant, shop or a service establishment.

CHAPTER 2
The Transformation of a State-Owned Enterprise into a Company

1. The Minister of Ownership Changes may transform a state-owned enterprise into a company, provided that

a) the joint request of its Executive Director and the Employee Council is submitted after

obtaining the opinion of the general assembly of the employees (delegates) as well as the opinion of its Founding Body, or

b) the request of the Founding Body is submitted with the consent of the Executive Director and the Employee Council after obtaining the opinion of the general assembly of the employees (delegates).

2. The request referred to in paragraph 1 should include specifically: a financial and economic analysis of the enterprise to be transformed, a draft of the company's founding deed as required by the Commercial Code, as well as a proposal for preferential treatment for employees of the company to acquire shares in that company from the State Treasury.

3. The Minister of Ownership Changes can refuse the transformation of a state-owned enterprise into a company due to the financial or economic condition of the enterprise or important national interest.

4. A refusal to transform a state-owned enterprise into a company must be made known within 3 months from the date of submission of the request and, apart from the grounds, include a list of conditions, upon whose fulfilment the transformation of the enterprise will be permitted or the time-period in which the issue of transformation will be reconsidered. Objections to the refusal should proceed in accordance with article 61 of the Law dated the 25th of September, 1981 on State-Owned Enterprises (J. of L. 1987, No. 35, item 201, 1989, No. 10, item 57 and No. 20, item 107, 1990, No. 17, item 99).

Art. 6.

1. The Prime Minister, on the motion of the Minister of Ownership Changes, can order the transformation of a state-owned enterprise into a company. In this case, the regulations of Art. 5 do not apply.

2. A motion, to which paragraph 1 refers, should be presented after obtaining the opinion of the Executive Director and Employee Council of the state-owned enterprise as well as the Founding Body. If no opinion is expressed within a month, it is assumed that there are no objections.

3. The Minister of Ownership Changes shall be in charge of the activities leading to privatisation.

Art. 7.

The Commercial Code shall apply, unless this Law provides otherwise, to companies emerging from the transformation of a state-owned enterprise.

Art. 8.

1. A company emerging from the transformation of a state-owned enterprise, will remain a company owned exclusively by the State Treasury until shares are disposed of to third parties.

2. A company emerging from the transformation of a state-owned enterprise will assume all the rights and duties of the transformed enterprise.

3. By virtue of this Law all rights and responsibilities deriving from administrative decisions are transferred to the transformed company.

1. By virtue of this Law employees of a transformed enterprise, become the employees of a company, with the exception stated in paragraph 2.

2. The employment relationships of those employed by nomination cease, by operation of law, from the day of the enterprise's removal from the register of state-owned enterprises. The above shall be deemed a withdrawal of nomination. Re-employment of such persons by the company will occur on terms agreed by both parties.

3. The Executive Director of a transformed state-owned enterprise is not entitled to the compensation described in the Law on State-Owned Enterprises, if the Director remains employed as a member of the board of directors of the company resulting from the transformation of the state-owned enterprise.

4. The company will be responsible for obligations arising from the terms of employment which existed prior to the transformation of the enterprise.

Art. 10.

The articles of incorporation of a company emerging from the transformation of a state-owned

enterprise shall be settled by the Minister of Ownership Changes acting on behalf of the State Treasury.

The closing annual balance-sheet of a state-owned enterprise shall constitute the opening balance-sheet of a company, the founding fund and the enterprise fund becoming the initial capital of the company. The company's articles shall specify which part of the initial capital constitutes equity capital and which reserve capital.

Art. 12.

1. Immediately after a company's articles are settled, the board of the company shall apply for the company to be entered into the commercial register.

2. After a company is recorded in the commercial register the state-owned enterprise is automatically removed from the state-owned enterprise register.

Art. 13.

Arts. 14—16 apply to companies resulting from the transformation of state-owned enterprises, provided the State Treasury holds all the shares.

Art. 14.

1. Up to the moment that shares are disposed of to third parties, companies are bound by the regulations of the general rules of accounting in state-owned enterprises, taking into consideration the Commercial Code regulations.

2. The Minister of Finance, by an executive order, can determine specific accounting rules for companies, which will observe the Commercial Code regulations.

Art. 16.

A company that came into existence in accordance with this Law can be a sole founder of a joint stock company.

Art. 17.

1. A Supervisory Council shall be established in a company which evolved from the transformation of a state-owned enterprise.

The employees of the company are entitled to elect one-third of the members of the Supervisory Council.

2. The regulations of the company's articles concerning the election of the members of the Supervisory Council by the employees cannot be repealed or amended while more than one half of the shares remain in the hands of the State Treasury, unless consent is given by a majority of those members of the Supervisory Council who are elected by the employees.

3. A company's employees elected to the Supervisory Council, enjoy the same legal protection of their terms of employment as members of the Employee Council in state-owned enterprises.

4. Election of the members of the Supervisory Council conducted by the voting of separate groups (as provided for in art. 379, paragraphs 3 — 5 of the Commercial Code) shall only apply to that part of the Council which is not elected by the employees.

CHAPTER 3

Disposing of Shares to Third Parties

Art. 18.

1. Transferring and encumbering shares belonging to the State Treasury in companies which have emerged from the transformation of state-owned enterprises, as well as subscribing for the shares in such companies provided the State Treasury remains the sole shareholder, are regulated by the Commercial Code unless the present Chapter specifies otherwise.

2. Gratuitous transfer of shares requires the consent of the Council of Ministers.

Art. 19.

1. The Minister of Ownership Changes decides whether shares owned by the State Treasury will be offered to other parties. Shares should be disposed of within two years from the date of recording the company in the commercial register, unless the Council of Ministers provides for a longer period.

2. The Minister of Ownership Changes is authorised to decide upon increasing the share capital of a company owned exclusively by the State Treasury through an issue of new shares.

Art. 20.

1. Before offering shares to third parties the Minister for Ownership Changes shall order that an economic and financial study be prepared for the purpose of asset valuation as well as establishing whether the implementation of organisational, economic or technical changes is required.

2. The Minister of Ownership Changes can grant an exemption from an economic and financial study, as mentioned in paragraph 1 of this Article, if the company was valued before its transformation, and the disposal of shares is to occur directly afterwards.

3. The Minister of Ownership Changes shall order that an analysis is prepared in order to determine the legal status of a company's assets, with specific consideration to claims on those assets by third parties.

4. The Minister of Ownership Changes, by an executive order, shall determine the rules and the methods of preparing such an analysis as well as the qualifications required by the persons preparing such a report.

Art. 21.

The Minister of Ownership Changes can make it a condition that a company's shares are only offered to third parties after the implementation of changes, as discussed in Art. 20, paragraph. 1.

Art. 22.

1. Before offering shares to third parties the Minister of Ownership Changes, with the approval of the Minister of Finance, on behalf of the State Treasury, can take over part or all of a company's debt.

2. The Minister of Ownership Changes will announce the intention to take over the company's debts in a manner required for making company announcements, in which he will call creditors to present their reservations no later than two months from the day of issuing such an announcement.

3. Those creditors, who within the period of time specified in paragraph 2, do not state their agreement for the debt take-over must be satisfied or secured prior to the company's debt take-over. The statement regarding the take-over of a company's debt is made by the Minister of Ownership Changes in the manner required for making company announcements.

Art. 23.

1. Subject to the exceptions specified in Art. 24, shares belonging to the State Treasury will be sold in the following ways:

- 1) on an auction basis
- 2) on a public offer basis
- 3) on a negotiated basis after a public invitation.

2. In specific cases, the Council of Ministers, on a motion of the Minister of Ownership Changes, can permit State Treasury shares to be sold in a different manner from those specified in para. 1.

3. Selling State Treasury shares through ways other than those specified in paragraph 1, or without the permission required by paragraph 2, is void.

4. The Minister of Ownership Changes, in agreement with the Minister of Finance, shall specify, by executive order, the financing principles for the offer of State Treasury shares in companies resulting from the transformation of state-owned enterprises.

Art. 24.

1. Employees of a state-owned enterprise transformed into a company are entitled to buy up to 20% of the total amount of shares of the company held by the State Treasury on a preferential basis. Employees retain the right to buy and acquire more shares on generally available terms.

2. Offering shares to employees on a preferential basis shall take place no later than two months from the time that the shares are offered on general terms.

3. Employees' rights to buy shares on preferential terms expire within 1 year from the movement of opening the sale of shares to employees.

4. Shares sold on a preferential basis to employees shall be sold at a 50% discount compared to the price set for natural persons, who are Polish citizens, offered on the first day of sale. This price is not subject to change during the period discussed in paragraph 3.

5. The total value of discounts given to the employees of an enterprise which was transformed into a company must not exceed the product of the average pay per employee in the state enterprise in the 12-month period prior to the registration of the new company in the commercial register and the number of employees purchasing shares.

6. The number of shares sold on a preferential basis to individual groups of employees and the conditions and deadlines for payment will be specified by the company's articles, in accordance to the request referred to in Art. 5.

7. Agricultural producers who are permanently connected with a company either through contracts of cooperation or of deliveries of agricultural produce may purchase shares in that company on the preferential basis prescribed for employees.

8. The Council of Ministers shall specify the types of companies in which shares may be purchased under the conditions set out in paragraph 7.

Art. 25.

1. Parliament, on a motion of the Council of Ministers, shall pass a resolution regarding the issue and value of Privatisation Coupons which can be used to pay for:

- a) acquiring shares issued as a result of the transformation of a state-owned enterprise;
- b) acquiring title to participation in financial institutions (Mutual Investment Funds) which will have at their disposal shares created as a result of the transformation of state-owned enterprises;
- c) acquiring enterprises or integrated parts of the assets of state-owned enterprises referred to in Art. 37.

2. The Privatisation Coupons issued in accordance with paragraph 1 will be distributed free of charge in equal amounts to all citizens of the Republic of Poland, resident in the country.

3. The Council of Ministers shall determine, by decree the expiry date of particular issues of Coupons, their form and distribution rules as well as the rules for making use of such coupons, and also rules limiting and, under certain conditions, prohibiting the transfer of Coupons.

Art. 26.

The Council of Ministers by decree, may also decide that certain issues of Coupons, referred to in Art. 25, will be available on credit terms.

Art. 27.

1. On the basis of separate legal provisions, payment for the purchase of shares from the State Treasury can also be effected in securities.

2. The Council of Ministers shall, at the request of the Minister of Ownership Changes, specify, by decree, the required form of payment for shares acquired from the State Treasury.

3. The Minister of Ownership Changes, upon the approval of the Minister of Finance, can allow Polish citizens to pay for shares by instalments.

Art. 28.

1. The Minister of Ownership Changes shall entrust shares to a bank or other financial institution according to rules specified in a contract, if the rights to these shares have not been acquired within a period of three months from the end of the time that they were to be offered as discussed in Art. 19 paragraph 1.

2. A bank or other financial institution, according to the contract, can exercise the rights deriving from ownership of the transferred shares. All revenues earned are transferred to the State Treasury.

Art. 29.

State legal persons cannot, without the prior consent of the Minister of Finance, purchase shares belonging to the State Treasury.

The regulations of the present Chapter apply also to the transfer of rights and acquisition of shares in a company, in which the sole shareholder is a company exclusively owned by the State Treasury. [Arts. 31 —36 are repealed]

CHAPTER 4**Privatisation of a State-Owned Enterprise by Means of Winding-up.****Art. 37.**

1. A Founding Body, after obtaining the consent of the Minister of Ownership Changes, may rule that a state-owned enterprise be wound-up in order to:

- 1) sell its assets, or integrated parts of the enterprise's assets,
- 2) use the enterprise's assets or integrated parts of the assets as a contribution to a company,
- 3) allow the enterprise's assets or integrated parts of its assets to be let, against payment, for a specified time.

2. The decision to wind-up and liquidate is made by the Founding Body on its own initiative or at the request of the Employee Council of the enterprise.

3. The Employee Council and the Executive Director of the enterprise have the right to challenge the decision referred to in paragraph 2 as specified in art. 61 of the Law referred to in Art. 5, paragraph 4.

Art. 38.

1. Winding-up, in order to allow an enterprise's assets to be let, against payment, as discussed in Art. 37, paragraph 1, point 3, may take place if:

- 1) a motion to liquidate and to allow the assets to be let, against payment, is adopted by the general assembly of the employees (delegates);
- 2) the permission to let these assets is for the benefit of a company;
- 3) a majority of the employees of the liquidated enterprise join the company;
- 4) only natural persons are partners in this company, unless the Minister of Ownership Changes determines otherwise;

5) the amount of share capital or the equity capital of the company shall not be less than 20% of the joint value of the founding fund and the fund of the liquidated enterprise.

2. Winding-up, in order to allow, against payment, use of assets, may occur regardless of the conditions prescribed in paragraph 1, point 3, if the company which ought to fulfil these conditions is not created within 2 months from the day of the Employee Council's decision on winding-up, or upon the general assembly of employees (delegates) approval.

Art. 39.

1. The letting of assets against payment shall be based on a contract concluded in the name of the State Treasury by the Founding Body.

2. In the contract referred to in paragraph 1, the parties can determine that, after a certain period of time, the user has the right to purchase those assets which he is using. In determining the purchase price, the value of all rentals or other dues paid by the user to date will be taken into account.

3. The Minister of Finance shall prescribe the principles for determining amount due for the use of State Treasury assets in cases referred to in paragraphs 1 and 2.

Art. 40.

Where a state-owned enterprise is wound-up on the basis of the regulations of the Law on State-Owned Enterprises, a Founding Body in the name of the State Treasury can:

- 1) contribute to a company the assets remaining after the winding-up of an enterprise or a part of it,

- 2) sell the assets remaining after the winding-up of an enterprise or a part of it.

Art. 41.

When selling assets of a liquidated enterprise or integrated parts of it, or allowing them, against payment, to be let, the Founding Body shall apply the regulations specified in Arts. 23, 25 and Art. 39, paragraph 3 to the extent relevant.

Art. 42.

The regulations of Chapters 2 and 3 of this Law shall apply to the extent relevant to companies exclusively owned by the State Treasury created on basis of Art. 37, paragraph 1, point 2, as well as Art. 40, point 1, and also to the disposing of shares in such companies.

Art. 43.

The rules for the sale of an enterprise shall apply to the extent relevant to the sale of an integrated part of the assets of a state-owned enterprise.

CHAPTER 5

Specific, Temporary and Final Regulations

Art. 44.

For notarial deeds connected with the transformation of a state-owned enterprise into a company, the Notary Office shall charge a fixed fee. The Minister of Justice shall determine, by executive order, the level of fee payable to notaries public.

Art. 45.

1. The provisions of this Law apply to the extent relevant to the privatisation of municipal enterprises, subject to the provisions of paragraphs 2 and 3.

2. The powers of the Minister of Ownership Changes, as well as of the Founding Body, prescribed in this Law, shall be exercised in respect of municipal enterprises by the Municipal Council or the Council of the Association of Municipalities.

3. The Municipality or the Association of Municipalities may, on the basis of an agreement with the Minister of Ownership Changes, transfer the conduct of all activities associated with privatising a municipal enterprise to the Minister. The conclusion of the agreement requires a resolution of the municipal representatives or the representatives of the Association of Municipalities.

Art. 46.

1. The Minister of Finance in the interest of the National Economy, at the request of the Minister of Ownership Changes, may exempt a company from income tax and tax on wage increases for a period of 3 years from the date a foreign party acquires shares belonging to the State Treasury, or acquires shares issued by a company owned exclusively by the State Treasury.

2. In the event of declaring the winding-up of a company during a period of income tax exemption or within 3 years from the end of this period, the company is obliged to pay the tax for the whole period of exemption. In this case the tax obligations arise at the moment the winding-up of the company is declared.

Art. 47.

The Council of Ministers within a period of 2 months from the Law coming into force will present to Parliament the motion mentioned in Art. 2, paragraph 1 for the year 1990.

1. The following changes are introduced to the Decree Law of the President of the Republic of Poland of the 27th of June 1934, the Commercial Code (J. of L. No. 57, item 502, 1946 No. 57, item 321, 1950 No. 34, item 312, 1964 No. 16, item 94, 1969 No. 13, item 95, 1988 No. 41, item 326):

1) in Art. 207 after the words "company employees" are added: "holding a position of general accountant, legal adviser, plant manager or other direct subordinate to Board members",

2) in Art. 378 after the words "company employees" are added: "having a position of general accountant legal adviser, plant manager or other direct subordinate to Board members".

Art. 49.

1. The following changes are introduced to the Law on State-Owned Enterprises of the 25th of September 1981 (J. of L. of 1987 No. 35, item 201).

1) After article 25.² is added article 25.³ to read:

“Art. 25.³ The order to liquidate a state owned enterprise on the basis of the State-Owned Enterprises Law will be issued in agreement with the Minister of Ownership Changes”.

2) Article 29 is repealed.

3) In article 30:

1) in paragraph 1 the words “and the procedures for liquidating a state-owned enterprise in order to establish a company” are deleted.

2) in paragraph 2, after the words “after the liquidation of a state-owned enterprise” a comma is added and the words “and also a liquidation on the basis of the Law on Privatisation of State-Owned Enterprises”.

3) In article 46 after the words „Founding Body” is inserted “according to the Law of July 13, 1990 on the Privatisation of State-Owned Enterprises”.

2. Uncompleted liquidation proceedings that were commenced under the State-Owned Enterprises Law of September 25, 1981 shall be continued under this Law.

The following changes are introduced to the Law of December 28, 1989, dealing with detailed principles for dissolving employees’ terms of employment for reasons related to the employer and dealing with amendments to some laws (J. of L. of 1990 No. 4, item 19, and No. 10, item 59).

1. Article 8, paragraph 3 shall read as follows:

“3. Severance payments are not payable to employees who:

1) are entitled to obtain a single termination payment upon retirement or disability retirement,

2) at the date of dissolving the terms of employment, accepted an offer to be employed in a firm that has taken over all, or part, of the assets, of the firm employing them to date, or in a firm created as a result of such a takeover,

3) after dissolving the terms of employment, start to undertake economic activity on their own account or as part of a company or co-operative related to the takeover of specified movable or immovable assets also to an employee who at the movement of dissolving the contract of employment is a partner/shareholder in a company, or a member of a co-operative, executing such a takeover”.

2. Article 14 is repealed.

Art. 51.

This Law shall take effect as of the day of its promulgation.